APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 98-2388

LOCAL UNION 1393 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Plaintiff-Appellant,

v.

UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
No. 97 C 1375—Larry J. McKinney, *Judge*

ARGUED DECEMBER 8, 1998
DECIDED FEBRUARY 12, 1999

Before COFFEY, RIPPLE and MANION, *Circuit Judges.*

RIPPLE, *Circuit Judge.* Local 1393 ("the Union") brought this action to compel the Utilities District of Western Indiana ("Utilities District") to arbitrate a grievance. The district court dismissed the claim on the Utility District's summary judgment motion. For the reasons set

forth in the following opinion, we affirm the judgment of the district court.

I

BACKGROUND

A.

The Utilities District discharged Dennis Bays for failure to appear at work at the proper time. The Union, acting pursuant to a collective bargaining agreement ("CBA"), then filed a grievance on Bays' behalf. The grievance sought back pay and reinstatement on the ground that the discharge was not for cause.

Article III, Section 1 of the CBA contains a broad grievance clause. It states:

> Any difference arising between an employee or a group of employees within the bargaining unit as to [the Utility District's] interpretation or application of this Agreement or any of its terms and conditions may constitute a grievance.

R. 1, Ex.A. This grievance clause further requires that, once the Union files a grievance, the concerned employee, the Union steward and the supervisor discuss the issue. If the grievance is not settled within seventy-two hours of that discussion, the grievance must be reduced to writing and submitted to the Utility District's Manager. In its discussion of this stage of the procedure, the grievance clause provides that "[a] decision by the Cooperative's Manager shall be final upon questions of management and matters retained by the employer as provided in [Section] 5 of Article II." *Id.* The grievance clause further states that, "as to any other questions," the Union may demand arbitration of its grievance. *Id.*

The clause referenced by the grievance clause, Article II, Section 5, is the management rights clause. That clause states:

> Subject only to any limitations contained in this Agreement, the union recognizes and agrees that the Employer retains the exclusive rights to . . . discharge . . . and discipline its employees.

Id.

In the final CBA provision relevant here, Article V, Section 4 delineates the conditions under which the District may terminate an employee's seniority. One of the conditions is when an employee "[i]s discharged for cause." *Id.*

B.

Before the district court, the Union argued that Bays' grievance should be submitted to arbitration. Pointing to the broad grievance provision and to Article V's requirement that the Utilities District must have "just cause" to break an employee's seniority, the Union claimed that the Utilities District also must have "just cause" to terminate employment.

The district court rejected the Union's argument. It found controlling the language of the management rights clause that "the Employer retains the exclusive rights to . . . discharge . . . and discipline." The court took the view that this express language of the management rights clause cannot be contradicted by the general and broad language of the arbitration clause. Nor did the court believe that the seniority provision of Article V could be read as limiting the employer's right to terminate employment under the management rights clause. "The right to discharge," wrote the court, "and the right to end an employee's seniority are two different rights. Seniority refers to the continuous service of an employee and is a

factor the employer takes into account when making employment decisions. . . . [S]eniority is not coterminous with employment." Mem. Op. at 7-8.

In short, the district court concluded that the terms of the collective bargaining agreement gave the employer the exclusive right to discharge its employees. The grievance and arbitration provisions of the CBA specifically exempt management's decision to discharge from the requirement of arbitration. The provision governing the termination of an employee's seniority rights does not give that employee the right to have his discharge grievance arbitrated.

II

DISCUSSION

The district court appropriately chose as the starting point of its analysis several cardinal principles emphasized by the Supreme Court of the United States in its recent jurisprudence on arbitration. We shall start our own discussion from the same perspective. " '[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute that he has not agreed to submit.' " *AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986) (quoting *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)). Whether a particular collective bargaining agreement creates a duty to arbitrate is a matter for judicial determination. *See id.* at 649. Finally, when the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that " '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.' " *Id.* at 650 (quoting

United Steelworkers, 363 U.S. at 582-83). With these general principles in mind, we turn to the particular CBA before us. As the principles stated by the Supreme Court in *AT&T Technologies* make clear, it is the text of that document that must control.

At the outset, we agree with the Union that the grievance clause in the CBA is very broad. Nevertheless, the scope of that broad grievance clause is expressly limited by the provision in that clause that "[a] decision by the Cooperative's Manager shall be *final* upon questions of management and matters retained by the employer as provided in [Section] 5 of Article II." Article III, Section 1 (emphasis added). Article II, Section 5, the management rights clause, in turn provides that, "[s]ubject only to any limitations contained in this Agreement, . . . the Employer retains the *exclusive* rights to . . . discharge . . . and discipline." (emphasis added).

The Union nevertheless submits that the seniority termination clause provides, explicitly or implicitly, an independent limit on the right of the District to terminate employment. In evaluating this contention, we start with the premises that "the management rights clause may not be considered apart from the rest of the agreement" and that there may be implied terms that give the management rights provision a scope narrower than, at first reading, its terms may suggest. *International Bhd. of Teamsters v. Logistics Support Group*, 999 F.2d 227, 230 (7th Cir. 1993). We also have noted, however, that an implied restriction of the management rights clause must be grounded in a provision of the CBA that is "expressly addressed to the dispute the union seeks to arbitrate." *Id.*; *see also International Ass'n of Machinists & Aerospace Workers v. General Elec. Co.*, 865 F.2d 902, 906 (7th Cir. 1989). In short,

> if the parties have agreed that management has the authority to conduct certain aspects of its business free from any union interference, a conflict arising in this domain is arbitrable only if management is alleged to have violated some specific check on its discretion.

Logistics Support Group, 999 F.2d at 230.

We do not believe that the seniority rights clause can be considered an express limitation on the right of the employer to terminate employees. A termination of employment does not necessarily also terminate seniority and therefore violate the seniority rights clause of the CBA. The right to seniority and the right to continued employment are distinct concepts that the parties to a CBA may choose to treat separately.

Nor, in the context of this collective bargaining agreement, do we believe that a "just cause" limitation on management's right to discharge can be implied. We have suggested that there may be cases in which it would be appropriate to imply a "just cause" limitation on a management rights clause. *Logistics Support Group*, 999 F.2d at 230.[1] Such an implication would be without foundation in this case, however, because the terms of the management rights clause so clearly state that the Utility District possesses plenary authority over discharge decisions. Here, there is an express clause reserving to management the decision to terminate and another clause precluding arbitration of claims related to termination. In *Logistics Support Group*, we held that an employer could refuse to

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[1] Arbitrators have implied a "just cause" requirement for termination from a "just cause" for loss of seniority provision. *See, e.g., SFIC Properties, Inc. v. International Ass'n of Machinists & Aerospace Workers, Dist. Lodge 94*, 103 F.3d 923, 925 (9th Cir. 1996).

arbitrate an unjust termination claim becaues the CBA contained a term expressly reserving for the employer the right to terminate and another term indicating that arbitration was not required unless there was an express term in the CBA indicating that arbitration was appropriate. *See id.* at 230. Although noting that we had held that the existence of an arbitration clause generally implies the existence of a "just cause" provision, we were unwilling to imply a "just cause" requirement in that case because of the explicit management rights provision that reserved to management the right to discharge. *See id.* at 229-30.

Similarly, in this case, we cannot discern any basis to imply a "good cause" limitation on the right of management to discharge. The CBA expressly provides the employer with the sole discretion and final authority to terminate; it also provides that this authority is "[s]ubject only to any limitations contained in this Agreement." Those provisions make clear that a "just cause" requirement should not be implied and the employer's decision to terminate should be given final effect.

Therefore, although we accept as a starting point that the presence of an arbitration clause creates a presumption of arbitrability, the provisions of this CBA simply are not susceptible to the interpretation that the Utilities District is required to arbitrate discharge grievances. Here we have "an absolutely undeniable reservation of unfettered managerial authority." *Logistics Support Group*, 999 F.2d at 230. Because the meaning of the CBA is clear, there is no doubt to resolve in favor of arbitrability. Therefore, the presumption is inapplicable. Accordingly, we hold that the plain wording of the CBA reserves to management the right to terminate employment without resort to arbitration.

CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

A true Copy:

Test:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Cause No. IP 97-1375 C M/S

LOCAL UNION NO. 1393, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Plaintiff,

v.

UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE,
Defendant.

ORDER

Both plaintiff Local Union No. 1393, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW") and defendant Utilities District of Western Indiana Rural Electric Membership Cooperative ("UDWI") have filed motions for summary judgment against the respective opposing party. IBEW filed their complaint pursuant to § 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185(a). IBEW alleges that UDWI breached the Collective Bargaining Agreement ("CBA") between the two parties by refusing to arbitrate whether an employee was discharged for cause. At issue is whether that employee's grievance should be submitted to arbitration under the governing CBA. Additionally, IBEW has requested an award of attorney's fees. The issues have been fully briefed by counsel and are ready to be resolved.

For the reasons stated herein, the Court GRANTS UDWI's motion for summary judgment and DENIES IBEW's motion for summary judgment.

I. FACTUAL & PROCEDURAL BACKGROUND

The parties are in agreement as to the underlying facts of the dispute. IBEW and UDWI are parties to a CBA dated July of 1994, which governs the terms and conditions of employment for UDWI's production, maintenance and construction employees. Stallons Aff. ¶ 1; Ex. A ("CBA"). The CBA was in effect in July of 1997 when UDWI discharged Dennis Bays ("Bays"), a bargaining unit employee. IBEW filed a grievance on Bays' behalf seeking reinstatement and back pay. Stallons Aff. Ex. C. In a letter dated August 12, 1997, UDWI stated that Bays was terminated "due to his failure to work at the times mutually identified by himself and management," and refused to agree to submit the grievance to arbitration. *Id.* Ex. D.

Article III of the CBA provides for a grievance and arbitration procedure. Section one of that Article reads "[a]ny differences arising between an employee or a group of employees within the bargaining unit as to the cooperative's interpretation or application of this Agreement or any of its terms or conditions may constitute a grievance if the following procedure is timely instituted and complied with by the Union: . . ." CBA Art. III, § 1. The first step in the process involves the concerned employees, the Union steward, and the supervisor discussing the grievance. *Id.* If the grievance is not settled within seventy-two hours of that meeting, then the second step in the procedure is to reduce the grievance to writing and submit it to the Cooperative's Manager within fifteen days from the alleged grievance. When a grievance is not re-

solved within twenty days of it being reduced to writing, the grievance may proceed to the third step of the process, which allows the Business Manager of the Union to demand arbitration. However, not all grieavnces may advance to arbitration. According to the CBA, at the second step of the procedure "[a] decision by the Cooperative's Manager shall be final upon questions of management and matters retained by the employer as provided in 5 of Article II." *Id.* Section five of Article II, which is referenced in step two of the grievance procedure, reads:

> Subject only to any limitations contained in this Agreement, the Union recognizes and agrees that the Employer retains exclusive rights to hire, discharge, layoff, promote, demote and discipline its employees; to assign tasks, places and times of work; to determine the methods and means by which its operations are to be carried on; to direct the performance of work and to provide for the conduct of the operations in a safe and effective manner.

Id. Art. II, § 5.

The description of the third step of the procedure, which immediately follows the sentence regarding the Cooperative Manager's final determination on questions of management and matters retained in Article II, section five, begins, "However, as to any other questions involved in the grievance upon which such decision shall have been rendered as above provided, the Business Manager of the Union may demand arbitration . . . ." *Id.* Art. III, § 1. The CBA also provides that, "[t]he arbitrator shall have no power to render a decision which adds to, subtracts from or modifies this Agreement; and the arbitrator's decision shall be confined to the meaning of the contract provision which gave rise to or which relates to the dispute." *Id.* Art III, § 4. Additionally, Article V of the

CBA outlines the rules governing employee seniority. Seniority "refer[s] to and include[s] the total length of continuous service of an employee with the Employer." Art. V, § 1. Service by an employee "shall be considered broken and seniority rights shall not be restored to a regular employee who: (1) voluntarily terminates his employment; (2) Is discharged for cause . . . ." *Id.* Art. V, § 4.

II. STANDARDS

According to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A genuine issue of material fact exists whenever "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 93 F.3d 992, 997 (7th Cir. 1996). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Guided by these standards, this Court now considers the present motion for summary judgment.

III. DISCUSSION

A. Summary of Arguments

The IBEW maintains that Bays' grievance should be submitted to an arbitrator. It contends that the CBA provision which explains that an employee's seniority may be terminated when the employee is discharged for cause means that UDWI's authority to terminate its employees, and thus terminate their seniority, is restricted. As such, it reasons, Bays's discharge is "clearly arbitrable under Article II of the CBA and controlling legal precedents" or at least meets the minimal requirement that the CBA be susceptible of an interpretation that the parties intended the arbitration clause to encompass employee discharges. Plf.'s Mot. for Summ. J. at 4; Plf.'s Resp. to Def.'s Mot. for Summ. J. at 3-4. IBEW also maintains that because there are express limitations on UDWI's ability to discharge employees, the Court does not have to analyze whether the CBA contains implied restrictions on UDWI's ability to terminate employment. Additionally, IBEW has requested that the Court award attorney's fees because UDWI's refusal to arbitrate was frivolous and unreasonable.

In contrast, UDWI maintains that under the express provisions of the CBA, the Cooperative's Manager has the final decision as to grievances concerning employee discharges. Furthermore, it argues that because seniority is not coterminous with employment, Article V of the CBA does not require that employee discharges be arbitrated. UDWI also asserts that a just cause provision should not be implied because had the parties wanted to restrict UDWI's right to discharge, it could have done so, and an implied provision would be at odds with express provisions of the CBA.

B. Analysis

The Seventh Circuit has had the opportunity to address arbitration disputes and has reaffirmed general principals provided by the Supreme Court in arbitration cases. *See Local 371 v. Logistics Support Group*, 999 F.2d 227, 228 (7th Cir. 1993); *International Ass'n of Machinists, Lodge No. 1000 v. General Electric Co.*, 865 F.2d 902, 903-04 (7th Cir. 1989). First, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 634, 648 (1986) (quoting *United States Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)). Second, the issue of whether the CBA creates a duty to arbitrate is a matter for judicial determination. *Id.* at 649. Third, when the CBA does contain an arbitration clause, the courts have imposed a presumption in favor of arbitration to the extent that "[a]n order to arbitrate should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.* at 650 (quoting *Warrior & Gulf*, 363 U.S. at 582-83.)

Generally, a grievance and arbitration procedure is considered the union's compensation for agreeing not to strike. *General Electric*, 865 F.2d at 903. However, despite the fact that case law suggest that there is "a supposed public policy in favor of labor . . . arbitration," the Seventh Circuit has emphasized that "arbitration is a creature of contract." *Id.* at 904. The *Logistics* court also acknowledged that generally reciprocity demands that if there are few exceptions to the "no strike" clause, there should be few exceptions read into the grievance procedure, but the court went on to explain that the duty to arbitrate is ultimately prescribed by contract. 999 F.2d at 231. Col-

lective bargaining agreements do not have to contain an arbitration clause. *General Electric*, 865 F.2d at 904. For those agreements that do contain an arbitration clause, the scope of that clause is governed by the terms the parties negotiated in the agreement. *Id.* Accordingly, "[a]n employer, therefore, is not required to arbitrate a grievance that is not within the scope of the arbitration clause." *Id.* However, in *Logistics*, the court noted that the agreements should be specific as to which subjects are to be excluded from arbitration. 999 F.2d at 231. The court concluded "[w]e would not be going too far in saying that a finding of nonarbitrability requires an absolutely undeniable reservation of unfettered managerial authority." *Id.*

A "just cause" provision may be implied into arbitration agreements. The Seventh Circuit has held that the existence of an arbitration clause implies the existence of a just cause provision on "the theory that the very nature of labor arbitration suggests that arbitrators have the power to order the reinstatement of employees who were fired without cause." *Logistics Support Group*, 999 F.2d at 229. However, an implied provision, such as just cause, "must give way to express provisions in the parties' agreement." *Id.* at 229 (citing E. Allan Farnsworth, *Farnsworth on Contracts* § 7.16 (1990)). Both parties believe that the CBA is clear as to what areas are covered by the CBA, and neither party has requested that the Court read a just cause provision into the CBA.[1]

IBEW is correct in stating that the grievance and arbitration provision contained in this CBA differs from the CBA at issue in *Logistics*. The court emphasized that the

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[1] The Court notes that the CBA's express provisions control which decisions are subject to arbitration, and the Court does not have to determine whether a just cause provision should be implied.

arbitration provision in *Logistics* was quite narrow. In contrast, the arbitration clause in this CBA is quite broad. However, broadness of the arbitration clause does not negate the fact that Article II, section five of the CBA does expressly exempt certain activities from arbitration. The Court cannot order UDWI to arbitrate a dispute it has not agreed to submit to arbitration. Article II, section five does include the language "subject only to other limitations contained in this Agreement" before it lists those decisions which are excluded from arbitration. IBEW maintains that the seniority provisions of Article V are those other limitations and that the provision which limits the conditions under which seniority may be terminated limits UDWI's ability to terminate a worker's employment without cause. IBEW argues that Article V allows the issue of discharge to be arbitrated because the issue of whether Bays seniority was was properly terminated may be arbitrated.

The seniority provision of Article V does not limit the employer's rights under Article II, section five. The right to discharge and the right to end an employee's seniority are two different rights. Seniority refers to the continuous service of an employee and is a factor the employer takes into account when making employment decisions. As UDWI correctly pointed out, seniority is not coterminous with employment, as there are situations where an employee may not be working for UDWI, but under the CBA, may not lose seniority. IBEW and Bays have not put his senaiority at issue. Bays' grievance alleges unjust discharge. He did not file a grievance claiming his seniority was not properly taken into account in the decision to discharge him or that his seniority was wrongly terminated. If Bays later had a reason to question whether this discharge broke his service to UDWI, thus affecting his seniority rights, that issue may be subject to the arbi-

tration procedure. However, that is not the issue in this case. The provision which limits under what circumstances seniority rights may be terminated does not limit the employer's right to discharge employees, nor does it require that employee discharges be subject to arbitration.

The last sentence of the second step of the grievance procedure does give a specific limit to the ability to arbitrate a grievance. The CBA specifies that the Cooperative's Manager has the final decision on any right listed in Article II, section five, and grievances concerning any of those areas do not have the right to continue on to arbitration. Article II, section five gives a list, be it a broad one, of the areas for which the employer retains exclusive rights and the Cooperative's Manager has the final decision. When the parties signed the CBA, they agreed to the broad grievance clause and the broad list of exclusions to the arbitration clause. They agreed that the right to arbitrate would be limited in accordance with Article II, section five. The sentence "subject only to any limitations contained in this Agreement" does not make the list any less specific if other provisions of the agreement do not limit the employer's right.

The CBA, which had been renewed after its original term and in effect for over two years at the time of the Bays' discharge, gave the employer the exclusive right to discharge employees. The arbitration and grievance procedure specifically exempted that right from having to be subject to arbitration. The provision that provides under what circumstances an employee's seniority rights may be terminated does not limit the employer's right to discharge employees. The CBA is not subject to an interpretation in which the discharge grievance would be subjected to arbitration. The right an employee has to have his seniority grievance arbitrated does not give him the right to

have his discharge grievance arbitrated. The rules governing the granting of seniority do not govern the discharging of employees.

III. CONCLUSION

According to the CBA, UDWI has reserved exclusive rights as to the issue of employee discharge and the agreement specifies that the Cooperative's Manager has the final decision on such issues. The seniority provision does not limit this right. The Court will not compel arbitration of the discharge grievance. Therefore the motion for summary judgment in favor of UDWI and against IBEW should be GRANTED. IBEW's motion for summary judgment against UDWI should be DENIED. As such, IBEW's request for attorney's fees is DENIED. No triable issues remain and UDWI is granted judgment as a matter of law.

IT IS SO ORDERED this 19th day of May 1998.

/s/ Larry J. McKinney
LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Cause No. IP 97-1375 C M/S

LOCAL UNION NO. 1393, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Plaintiff,

v.

UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE,
Defendant.

ENTRY OF JUDGMENT

The Court has granted a motion for summary judgment in favor of the defendant, UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE, and against the plaintiff, LOCAL UNION NO. 1393, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO. A final judgment is entered accordingly. Plaintiff shall take nothing by way of his complaint. This cause is DISMISSED WITH PREJUDICE.

Dated this 19th day of May, 1998.

/s/ Laura Briggs
LAURA BRIGGS, Acting Clerk
United States District Court
Southern District of Indiana

By: /s/ Diana L. Dickerson
Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

March 10, 1999

Before

HON. JOHN L. COFFEY, Circuit Judge
HON. KENNETH F. RIPPLE, Circuit Judge
HON. DANIEL A. MANION, Circuit Judge

No. 98-2388

LOCAL UNION 1393 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Plaintiff-Appellant,

v.

UTILITIES DISTRICT OF WESTERN INDIANA RURAL ELECTRIC MEMBERSHIP COOPERATIVE,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

No. 97 C 1375—Larry J. McKinney, Judge

ORDER

On consideration of the appellant's petition for rehearing filed on February 24, 1999, the judges on the panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

STATUTORY PROVISIONS INVOLVED

Section 203(d) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 173(d), provides as follows:

> **Use of conciliation and mediation services as last resort**
>
> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievances disputes arising over the application or interpretation of an existing collective bargaining agreement. The Service is direceed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Section 301(a) of the LMRA, 29 U.S.C. § 185(a), provides as follows:

> **Venue, amount, citizenship**
>
> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy or without regard to the citizenship of the parties.